

X that the ward had engaged in advance planning for financial health care decision²making to be a factor in awarding payment of the petitioner's reasonable attorney fees and costs, rather than a prohibition on that payment.

Currently, the court may require a bond from the person appointed guardian of the estate of a ward and may require a "blanket bond" from a county institutional employee who is appointed a guardian for numerous residents of county facilities. The bill requires that the court order specify the bond amount, prohibits requiring a bond for the guardian of the person of the ward, and eliminates the authority to require "blanket bonds."

XX S The bill clarifies the grounds under which a court must dismiss a petition for guardianship. If a guardian is appointed, the bill specifies the joint decision²making powers of any co-guardians appointed; specifies that any financial power of attorney executed by the proposed ward remains in effect unless, only for good cause shown, it may be revoked or the agent's powers limited, and prohibits the guardian from making decision² for the ward that may be made by the agent; specifies that the county in which the action is pending for the guardianship proceeding is the county that is liable for guardian ad litem fees; and specifies circumstances in which the proposed ward is not liable for fees due his or her legal counsel.

Involuntary administration of psychotropic medication

Under current law relating to guardianship, a petition for appointment of a guardian may allege that the proposed ward is not competent to refuse psychotropic medication and that the medication is, under several criteria, necessary as a protective service. "Not competent to refuse psychotropic medication" is defined to mean that, because of chronic mental illness and after advantages and disadvantages of and alternatives to accepting psychotropic medication have been explained to an individual, he or she is incapable of expressing an understanding of the advantages and disadvantages or is substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives in order to make an informed choice about acceptance or refusal. If, at hearing, the court finds that the individual is not competent to refuse psychotropic medication and that the medication is necessary, the court must appoint a guardian to consent to or refuse the medication on behalf of the individual and order development of a treatment plan for the person. The relevant county department must at least annually review and evaluate the individual's status and, if appropriate, recommend discharge or change in the treatment plan. The court also must annually appoint a guardian ad litem to review the county department's evaluations, inform the individual and his or her guardian of certain rights, and file a report with the court. The court must order an independent evaluation and a hearing to continue, modify, or terminate the guardianship, if requested or on the court's own motion. If the individual substantially fails to comply with the treatment plan and if certain conditions are met, the court may authorize the guardian to consent to the involuntary administration of psychotropic medication to the individual.

For purposes of the guardianship laws, the bill defines "psychotropic medication" and establishes a standard for the power of a guardian to give informed consent (subject to the power of an agent under any power of attorney for health care

X of the ward) to the ward's voluntary receipt of psychotropic medication. The bill clarifies that a guardian may consent to the involuntary administration of psychotropic medication only under a court order under the laws relating to protective placement and protective services. Under these laws, the bill establishes an exclusive procedure for involuntary administration of psychotropic medication as a protective service to an individual who has been protectively placed. Under this procedure, a petition for involuntary administration of psychotropic medication must meet all requirements for a protective services petition and also allege the condition, past behavior, and numerous other matters relating to the individual's competence to refuse psychotropic medication. A guardian ad litem must be appointed for the individual and must report to the court his or her conclusions concerning the allegations, and the court must appoint legal counsel on behalf of the individual. If requested, the individual may have an independent medical or psychological evaluation that is relevant to his or her competency to refuse the medication, the truth of the petition's allegations, and whether involuntary administration is in the individual's best interests. After hearing, the court may authorize a guardian to consent to involuntary administration of psychotropic medication to a ward as a protective service, if the court or jury finds that, by clear and convincing evidence, the requirements for the involuntary administration are met. If the court issues such an order, the order must specify the methods of involuntary administration to which the guardian may consent; require the presence of certain medical personnel when administered; require the maintenance of records concerning the methods of administration used; and require development of a treatment plan. The bill specifies procedures for noncompliance with the order, requires annual review of the order, and requires performance of annual review of the status of the individual by the relevant county department. Further, the bill requires the court to appoint a guardian ad litem after receipt of the annual county department report and specifies responsibilities of the guardian ad litem with respect to the ward. The bill requires the court that issued the order for involuntary administration of psychotropic medication annually to review reports of the county department and the guardian ad litem and order either a summary hearing or full due process hearing, after which the court must terminate, modify, or order continuation of the order.

Duties and powers of a guardian; limitations

Currently, no guardian may lend guardianship funds to himself or herself and a guardian is limited in purchasing property of the guardian's ward. A guardian must pay just debts of the ward from the ward's estate and its income.

The bill specifies in detail numerous powers and duties of a guardian (either a guardian of the person or a guardian of the estate) and clarifies that a guardian's powers are limited to those authorized by statute or court order, that a ward retains all rights that are not assigned to the guardian or otherwise limited by statute, and that a guardian's powers are limited to those necessary to provide for the personal needs or property management of the ward in a manner that is appropriate to the ward and that constitutes the least restrictive form of intervention. Under the bill, a guardian may not lend the ward's funds to another unless the court first approves

the terms, rate of interest, and any requirement for security, and may purchase property of the ward only at fair market value and with the approval of the court. The requirement to pay legally enforceable debts of the ward, including by filing tax returns and paying taxes owed is, under the bill, made a duty of a guardian of the estate.

Duties and powers of a guardian of the estate

Currently, although the title to the ward's estate remains the ward's, the guardian of the estate must take possession of and protect and preserve the ward's property; rents, income, and other benefits from the property; and any proceeds arising from the sale or other actions to the property. The bill specifies numerous duties of the guardian of the estate, and requires that the guardian of the estate, after following any applicable requirements concerning petitioning the court for the authority to sell, mortgage, pledge, lease, or exchange the ward's property, perform these duties so as to provide the ward with the greatest amount of independence and self-determination with respect to property management in light of the ward's functional level, understanding, and appreciation of his or her functional limitations and in light of the ward's personal wishes and preferences.

X Currently, in exercising powers, the guardian of the estate must use the judgment and care exercised by persons of prudence, discretion, and intelligence in the management of their own affairs. Currently, after submittal of a petition and under court order, assets of a ward may be transferred to the trustee of an existing revocable living trust for the benefit of the ward or dependents or to the trustee of a trust for the benefit of a minor ward or, if the minor dies, to his or her estate. A guardian of the estate appointed for a married ward may exercise, with court approval, management and control rights over marital or nonmarital property and the ward's business affairs, join in a transaction for which joinder of both spouses is required, or execute a marital property agreement, but not make, amend, or revoke a will. The guardian of the estate may also, if specified in the court's order, continue the business of a ward, and may apply to the court for adjustment of claims of the ward. The guardian of the estate may, with court approval, retain real or personal property of the ward or that the ward acquires by gift or inheritance. The guardian of the estate may, without court approval, sell

X The bill requires that the guardian of the estate, in exercising powers, consider, consistent with the functional limitations of the ward, the ward's understanding of the harm that he or she is likely to suffer as the result of his or her inability to manage property and financial affairs, the ward's personal preferences and desires, and the least restrictive form of intervention for the ward. The bill requires that certain actions specified in current law and numerous others specified in the bill may be performed by the guardian of the estate with respect to the ward's income and assets only with the court's prior written approval following any petition and upon any notice and hearing that the court requires. Further, the bill specifies a detailed procedure that a guardian of the estate must follow in order to transfer any of a ward's assets to or for the benefit of another person. The bill also specifies numerous powers, in addition to those in current law, which the guardian of the estate may perform without first receiving the court's approval.

on behalf of the ward,
do numerous things, including entering into contracts
and applying for public and private benefits.

Duties and powers of guardian of the person

Under current law, a guardian of the person of a ward must annually report on the ward's condition to the court and the relevant county department, and must endeavor to secure necessary care or services on behalf of the ward. If a court finds that an individual for whom a determination of incompetency is proposed is not capable of understanding the objective of the elective process, the court may find the individual ineligible to register to vote or to vote in an election. (S)

X The bill requires that a guardian of the person endeavor to secure care or services that are in the ward's best interest, by, among other things, regular inspection, in person, of the ward's condition, surroundings, and treatment; examination of the ward's patient health care records; and inquiry into alternatives to treatment for the ward if drastic or restrictive treatment is proposed. (S)

X The bill specifies that a guardian of the person has only those rights and powers that he or she is specifically authorized to exercise by statute, rule or court order; any other right is retained by the ward, unless the ward has been declared by a court incompetent to exercise a right or the guardian of the person has been authorized by a court to exercise certain rights usually retained by the ward. The bill specifies numerous rights that are retained by individuals who are determined incompetent, specifies a proceeding in which a court may find, by clear and convincing evidence, that an individual has incapacity to exercise specified rights, including the right to register to vote or vote and the right to consent to organ donation. A guardian of the person may not exercise a right on behalf of a ward who is declared not competent to exercise that right, unless so authorized by a court. The bill specifies the standard under which a court may make this authorization, including the power to give informed consent, if in the ward's best interests, to voluntary or involuntary administration of psychotropic medication. Lastly, the bill specifies a standard that the guardian of the person must follow in exercising powers and duties delegated to the guardian of the person by a court.

Temporary guardianships

Currently, after considering a petition, a court may appoint a temporary guardian for a ward, including for a minor for a medical purpose, for 60 days and may extend the order for one additional 60-day period. The temporary guardian may perform duties concerning specific property or as ordered by the court. Statutory provisions concerning the powers and duties of guardians apply, except as limited by the court's order. The temporary guardian must report as directed by the court, account to the court at the termination of the temporary guardianship, and deliver the ward's estate to those entitled to it. Duties and powers of a temporary guardianship cease upon the appointment of a guardian, when a minor for whom a temporary guardianship attains the age of 18, or if the court determines that the situation of the ward that was the cause of the temporary guardianship has ended. ward's

The bill establishes a standard for the appointment of a temporary guardian; establishes procedures for appointment of a temporary guardian, including appointment of a guardian ad litem; provides for a rehearing on the issue of appointment of the temporary guardian, if requested; clarifies the duration of the temporary guardianship and the authority of the temporary guardian; and prohibits

the temporary guardian from selling real estate or expending more than \$2,000 unless authorized by the court.

Standby guardianships

Under current law, a person may at any time bring a petition for the appointment of a standby guardian of the person or estate of a minor or an individual found incompetent, to assume the duty and authority of guardianship on the death, incapacity, or resignation of the guardian. If appointed, the standby guardian has the powers and duties of the guardian and must notify the court upon assuming office.

The bill clarifies that a standby guardian of the person may be appointed for a spendthrift and that appointment of a standby guardian is effective upon the unwillingness, inability to act, or resignation or court's removal of the guardian, or during a period when the guardian is temporarily unable to fulfill his or her duties, including during an extended vacation or illness. Under the bill, when a standby guardianship takes effect, the court must issue new letters of guardianship that specify that the standby guardianship is permanent or that specify the time period for a limited standby guardianship.

Termination of limited guardianship of property

Currently, upon petition, in a procedure separate from appointment of a guardian, a court may appoint a limited guardian of property, under which the limited guardian receives, manages, disburses, and accounts for property of the ward. Unless limited by a court, an adult ward under a limited guardian of property may receive and expend wages and other earnings and may contract under certain circumstances.

This bill eliminates the appointment of a limited guardian of property as a procedure separate from appointment of a guardian.

POST-APPOINTMENT MATTERS

Inventory

Currently, when a guardian of the estate is appointed, an inventory must be made of the ward's property under the same requirements as for the inventory of the estate of a decedent. The guardian of the estate must by oath verify that the inventory includes all the ward's property; the court may examine the guardian of the estate as to the inventory or any supposed omission. A court may order a guardian who neglects to file an inventory to do so.

The bill establishes requirements for information that the inventory must provide with respect to each asset of the ward and the time by which the guardian of the estate must file the initial inventory, specifies persons to whom the guardian of the estate must provide copies of the inventory and the fee due when the inventory is filed, and authorizes the court to order that the guardian of the estate appraise any or all of the ward's income and assets.

Accounts

Currently, every guardian except a corporate guardian must annually, before April 15, as specified by court order, or at any other time required by a court, file an account specifying the amount of the ward's property received and held or invested,

the nature of the investment, receipts and expenditures, and any change in status of the surety on the guardian's bond. The guardian must produce for the court evidence of the ward's securities, deposits, and other investments. If the account is unsatisfactory, the court may appoint a guardian ad litem for the ward. The court may order any person entrusted by the guardian with part of the ward's estate to appear and render an account. Action by a court on an account is final only if notice is provided. If a guardian fails to file an account, the court may order the guardian to show cause for the failure and may issue a warrant. The guardian may be fined \$50, or imprisoned up to 10 days, or both, if the court finds that failure, refusal, or neglect to file an account under court order is willful or inexcusable.

The bill makes exceptions to the requirement for annual submittal of an account, for waiver by a court, or for income and assets of a ward that do not exceed \$20,000; the guardian must notify the court if the ward's income and assets exceed this amount. The bill eliminates the exception from filing for corporate guardians. The bill creates special requirements for annual accounts of married wards. Under the bill, an action by a court on an account is final only if the guardian first provides notice to the ward, any guardian ad litem of the ward, and any personal representative or special administrator of the estate of a deceased ward. For a guardian who fails to file the account as required by law or as ordered by the court, the court must direct that a copy of the court's order to the guardian to show cause be served on the guardian at least 20 days before the court-ordered court appearance date. The bill also increases the fine for guardian failure, refusal, or neglect to \$250.

Procedure to expand an order of guardianship

The bill creates a procedure by which a guardian or other person may submit to a court a request for removal of rights from a ward and transfer to the guardian of powers in addition to those specified in the order of appointment. If, after notice is provided, no objection is submitted, the court may amend the order, but if an objection to the request is submitted, the court must hold a hearing for review of the ward's incompetency.

Review of incompetency and general termination of guardianship

Currently, a guardianship of an individual who is found incompetent continues during the life of the ward or until terminated by the court. Guardianship of a minor who is found incompetent is reviewed when the minor attains age 18. The court must conduct a hearing, including a jury trial if requested, if an adult ward or his or her guardian petitions for a review of incompetency. After a hearing or on its own motion, a court may terminate or modify the ward's guardianship. Termination of guardianship of the person occurs when a formerly minor ward attains age 18, unless the minor was found incompetent; a minor marries; or the court determines that the ward is competent. Termination of guardianship of the estate occurs under these same grounds and if the ward dies. In addition, the court may terminate a guardianship for a ward whose estate is depleted to below \$5,000 if it is to the advantage of the ward to do so. For property of a nonresident ward in the possession of or due from a guardian appointed in this state, the court may, after receipt of a petition and provision of notice, order the property delivered to the ward's foreign guardian.

For a review of a ward's incompetency, the bill specifies time limits and procedures; requires the court to appoint a guardian ad litem, fix a time and place for hearing, and designate persons entitled to notice and the manner of giving notice; and specifies the right of the ward to counsel, including at county expense if the ward is indigent. For termination of a guardianship of the person, the bill clarifies that the guardianship does not terminate on attainment of age 18 years or marriage by a minor ward if the guardianship was ordered on the grounds of incompetency; and expands the grounds for termination of a guardianship of the person or a guardianship of the estate. For a depleted guardianship, the standard for depletion is increased to \$20,000. If terminating the guardianship, the court is authorized to order the guardian to make appropriate financial arrangements for the burial or other disposition of the ward's remains. Alternatively, the court may continue the guardianship, but waive requirements for a bond for the guardian and waive or require an accounting by the guardian.

Final accounts

Currently, if a court terminates a guardianship or a guardian resigns, is removed, or dies, the guardian or the guardian's personal representative must render a final account to the court, the former ward, the successor guardian, or the deceased ward's personal representative. After approval of the account and the filing of receipts, the guardian must be discharged and the guardian's bond released. The guardian of an estate of not more than \$1,000 must render an account only on termination of the guardian's guardianship or as ordered by the court. If a ward dies leaving an estate that may be settled under laws relating to summary settlement of small estates, the court may approve that summary settlement and distribution without appointing a personal representative.

For termination of a guardianship, the bill additionally authorizes final accounting by the guardian's special administrator and rendering of the account to the ward or the deceased ward's special administrator, as appropriate. If the ward dies and the guardian and the deceased ward's personal representative or special administrator are the same person, the personal representative or special administrator must give notice of termination and rendering of the final account to all interested persons, as defined in the bill, of the ward's estate. The bill increases to \$20,000 the value of small estates of wards for which a final account need not be filed, unless ordered by a court, and requires the guardian to provide the court with a list of the ward's assets when the guardianship terminates, including at the death of the ward.

Review of conduct of guardian

The bill specifies that the court that appointed a guardian has continuing jurisdiction over the guardian, establishes numerous causes for court action against a guardian, establishes procedures and notice requirements for a hearing to review the guardian's conduct, and establishes remedies of the court. The bill authorizes a court to remove a paid guardian if changed circumstances indicate that a previously unavailable voluntary guardian is available to serve and that the change would be in the ward's best interest. The court may require the guardian to pay any costs of

the proceeding to review the guardian's conduct and authorizes a ward who petitions for review to retain legal counsel and contract for the payment of fees.

Guardian compensation and reimbursement

The bill establishes conditions under which a guardian of the person or a guardian of the estate is entitled to compensation and to reimbursement for expenses, including factors that a court must use in deciding whether compensation is just and reasonable. The bill specifies that a court must approve compensation and reimbursement before payment is made but need not do so before charges are incurred.

Conservatorship

Under current law, any adult who believes that he or she is unable properly to manage his or her property or income may voluntarily apply to the circuit court of his or her county of residence for appointment of a conservator of the estate. At a hearing for such an appointment, the court must personally examine the applicant and, if satisfied that the applicant desires a conservator and that the nominated fiduciary is suitable, appoint the conservator and issue letters of conservatorship after the nominee files a bond. A conservator has the powers and duties of a guardian of the estate, and these powers cease if the court removes the conservator or the conservatee dies. Anyone may apply for termination of the conservatorship, for which the court must hold a hearing. Unless it is clearly shown that the conservatee is incompetent, the court must remove the conservator and order the property restored. However, the court may order continuation of the conservatorship or appointment of a successor conservator. Appointment of a conservator does not constitute evidence of competency or incompetency of the conservatee.

The bill authorizes an individual who is unwilling to manage his or her assets or income to apply for conservatorship and clarifies that a conservatee may make gifts of his or her assets, subject to the conservator's approval. However, if the individual has executed a financial power of attorney before conservatorship, that power of attorney remains in effect, unless revoked or limited by the court for good cause, and the conservator's authority is limited by the authority expressly granted to the agent under the power of attorney. The bill authorizes appointment of a standby conservator and specifies the standard for appointment of a standby conservator. The bill clarifies that a conservatorship may be terminated only by a court after hearing and specifies standards for termination. The bill also specifies actions by a conservator that constitute cause for his or her removal by a court. The bill requires that a final account of the former conservatee's income and assets be rendered if a court terminates a conservatorship or a conservator resigns, is removed, or dies.

Other provisions

The bill makes numerous additional changes to the laws related to guardianships and conservatorships.

space → For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0027/P1Stat¹
DAK:.....

FAKE BILL
INSERTS

INSERT 3A

45.55 Notes and mortgages of minor veterans. Notwithstanding any provision of this chapter or any other law to the contrary, any minor who served in the active armed forces of the United States at any time after August 27, 1940, and the husband or wife of such a minor may execute, in his or her own right, notes or mortgages, as defined in s. 851.15, the payment of which is guaranteed or insured by the U.S. department of veterans affairs or the federal housing administrator under the servicemen's readjustment act of 1944 ~~or~~ the national housing act ~~or~~ any acts ~~supplementary thereto or amendatory thereof~~ supplementing or amending these acts. In connection with ~~such~~ these transactions, ~~such~~ the minors may sell, release or convey ~~such~~ the mortgaged property and litigate or settle controversies arising therefrom, including the execution of releases, deeds, and other necessary papers or instruments. ~~Such~~ The notes, mortgages, releases, deeds, and other necessary papers or instruments when so executed ~~shall~~ are not be subject to avoidance by ~~such~~ the minor or the husband or wife of ~~such~~ the minor upon either or both of them attaining the age of 18 because of the minority of either or both of them at the time of the execution thereof.

~~History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.32, 1980 a. 56; 1997 a. 188~~

****NOTE: This is s. 880.32, as renumbered and amended.

INSERT 3B

50.02 (2) (ad) The department shall promulgate rules that require each facility licensed under this subchapter to provide information necessary for the department to assess the facility's compliance with s. 55.14.

51.01 (5) (a) "Developmental disability" means a disability attributable to brain injury, cerebral palsy, epilepsy, autism, Prader-Willi syndrome, mental

retardation, or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mental retardation, which has continued or can be expected to continue indefinitely and constitutes a substantial handicap to the afflicted individual. "Developmental disability" does not include senility ~~which~~ that is primarily caused by the process of aging or ~~the infirmities of aging~~ degenerative brain disorder, as defined in s. 55.01 (1v).

History: 1975 c. 430 ss. 11, 81; 1977 c. 26; 1977 c. 203 s. 106; 1977 c. 428; 1981 c. 79 s. 17; 1983 a. 189 s. 329 (19); 1983 a. 441; 1985 a. 29 s. 3202 (23); 1985 a. 265, 307; 1993 a. 445; 1995 a. 27; 1997 a. 47; 1999 a. 9.

51.03 (3) (a) 6. The number of persons for whom guardians are appointed under s. 880.33 (4m), 2003 stats.

History: 1975 c. 430; 1989 a. 336; 1995 a. 292; 1999 a. 9.

****NOTE: Do you want reference to s. 55.14 in this subdivision? Any other ch. 55 provision?

51.20 (7) (d) 1. (intro.) If the court determines after hearing that there is probable cause to believe that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days, and shall proceed as if petition had been made for guardianship and protective placement or services. If the court orders only temporary protective services for a subject individual under this paragraph, the individual shall be provided care only on an outpatient basis. The court may order psychotropic medication as a temporary protective service under this paragraph if it finds that there is probable cause to believe that the allegations under s. ~~880.07 (1m) (c) and (em)~~ 55.14 (3) apply, that the individual is not competent to refuse psychotropic medication, and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for and participate in subsequent legal proceedings. An individual is not competent to refuse psychotropic medication if,

because of ~~chronic mental illness~~ serious and persistent mental illness, as defined in s. 55.10(6v), and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to the individual, one of the following is true:

51.20 (7) (d) 1. b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her chronic serious and persistent mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283; 1999 a. 85, 89, 162; 2001 a. 16 ss. 1966i to 1966n, 4034ze to 4034zh; 2001 a. 38, 61, 109; 2003 a. 33, 50, 326.

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283; 1999 a. 85, 89, 162; 2001 a. 16 ss. 1966i to 1966n, 4034ze to 4034zh; 2001 a. 38, 61, 109; 2003 a. 33, 50, 326.

51.30 (4) (b) 8m. To appropriate examiners and facilities in accordance with s. 54.36 (2), 971.17 (2) (e), (4) (c) and (7) (c), 980.03 (4) or 980.08 (3). The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17 or ch. 980.

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38.

****NOTE: Please see my ****NOTE under s. 54.36 (2).

INSERT 4

(4) "Court" means the circuit court or judge assigned to exercise probate jurisdiction.

****NOTE: This definition is the same as s. 851.04, stats.; do you want it?

(5) "Decedent" means the deceased individual whose estate is subject to administration.

****NOTE: This definition is the same as s. 851.05, stats.; do you want it?

INSERT 5A

****NOTE: Please review my revised definition of "guardian"; I replaced "or" with "and". Here, the guardian must both manage and provide for, correct?

INSERT 5B

(12) "Heir" means any person, including the surviving spouse, who is entitled under the statutes of intestate succession to an interest in property of a decedent. The state is an heir of the decedent and a person interested under s. 45.37[✓] (10) and (11)[✓] when the decedent was a member of the Wisconsin Veterans Home at King or at the facilities operated by the department of veterans affairs under s. 45.385[✓] at the time of the decedent's death.

****NOTE: This definition is the same as s. 851.09, stats.; do you want it?[✓]

(13) "Impairment" means a developmental disability, serious and persistent mental illness, degenerative brain disorder, or other like incapacity.

INSERT 6

(15) "Individual found incompetent" means an individual who has been adjudicated by a court as meeting the requirements of s. 54.10[✓] (3).

INSERT 8A

(19) "Minor" means ~~a person~~[✓] an individual who has not attained the age of 18 years. X

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.01; 1973 c. 284; 1975 c. 430; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 366; 1993 a. 486; 1995 a. 268.

INSERT 8B

(21) "Mortgage" means any agreement or arrangement in which property is used as security.

****NOTE: This definition is the same as s. 851.15, stats.; do you want it?[✓]

(22) "Other like incapacities" means those conditions incurred at any age ~~which that~~ are the result of accident, organic brain damage, mental or physical disability, or continued consumption or absorption of substances, ~~producing and that produce~~ a condition ~~which that~~ substantially impairs an individual from providing ~~for the individual's~~[✓] his or her own care or custody. X

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.01; 1973 c. 284; 1975 c. 430; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 366; 1993 a. 486; 1995 a. 268.

****NOTE: This is s. 880.01 (8), as renumbered and amended.

(23) "Personal representative" means any individual to whom letters to administer a decedent's estate have been granted by the court or by the probate registrar under ch. 865, but does not include a special administrator.

****NOTE: This definition is the same as s. 851.23, stats.; do you want it?

INSERT 8C

(25) "Property" means any interest, legal or equitable, in real or personal property, without distinction as to kind, including money, rights of a beneficiary under a contractual arrangement, choses in action, and anything else that may be the subject of ownership.

****NOTE: This definition is the same as s. 851.27, stats.; do you want it?

INSERT 9A

(29) "Sale" includes an option or agreement to transfer whether the consideration is cash or credit. It includes exchange, partition, and settlement of title disputes. The intent of this subsection is to extend and not to limit the meaning of "sale."

****NOTE: This definition is the same as s. 851.29, stats.; do you want it?

INSERT 9B

(31) "Spendthrift" means a person who, because of the use of intoxicants alcohol or other drugs or because of gambling, idleness or debauchery or other wasteful course of conduct, is unable to attend to business or thereby manage effectively his or her financial affairs or is likely to affect the health, life, or property of the person himself, herself, or others so as to endanger the his or her support of ~~the person~~ and the ~~person's~~ support of his or her dependents, if any, or expose the public to such responsibility for his or her support.

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.01; 1973 c. 284; 1975 c. 430; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 366; 1993 a. 486; 1995 a. 268.

****NOTE: This is s. 880.01 (9), renumbered and amended.

(32) "Standby conservator" means an individual designated by the court under s. 54.76 (2) whose appointment as conservator becomes effective immediately upon the death, resignation, or court's removal of the initially-appointed conservator, or if the initially-appointed conservator is temporarily or permanently unable, unavailable, or unwilling to fulfill his or her duties.

INSERT 10

(34) "Successor conservator" means an individual appointed under s. 54.76 (9).

(35) "Successor guardian" means an individual appointed under s. 54.54.

(36) "Surviving spouse" means an individual who was married to the decedent at the time of the decedent's death. "Surviving spouse" does not include any of the following:

(a) An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, if the decree or judgment is not recognized as valid in this state, unless the ~~two~~^{two} subsequently participated in a marriage ceremony purporting to marry each other or they subsequently held themselves out as husband and wife.

(b) An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a 3rd individual.

(c) An individual who was party to a valid proceeding concluded by an order purporting to terminate all property rights based on the marriage with the decedent.

***NOTE: This definition is based on s. 851.30, stats.; do you want it?

(37) "Ward" means ~~a subject~~ an individual for whom a guardian has been appointed.

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.01; 1973 c. 284; 1975 c. 430; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 366; 1993 a. 486; 1995 a. 268.

***NOTE: This is s. 880.01 (10), renumbered and amended.

(38) "Will" includes a codicil and any document incorporated by reference in a testamentary document under s. 853.32 (1) or (2). "Will" does not include a copy, unless the copy has been proven as a will under s. 856.17, but "will" does include a properly executed duplicate original.

****NOTE: This definition is the same as s. 851.31, stats.; do you want it?

However,

INSERT 14

the rest of

****NOTE: I do not understand Betsy Abramson's e-mail of August 24, 2004, concerning the Bar's Real Property, Probate and Trust section's response to a query concerning this provision. What does "it should be extended to formal probate and summary proceedings" mean? Please state explicitly, if this is a reference to a specific statute or statutes, what they are and what you want me to do.

INSERT 17

****NOTE: So that this provision will not potentially conflict with sub. (2), (4), or (6), I have added a "best interests" standard. Please review.

INSERT 18A

****NOTE: Does this provision now read as you wish?

****NOTE: As this provision now reads, both a court and DHFS would have to approve the entity. Do you want to require DHFS to promulgate these rules? (If there are no rules, DHFS would be unable to approve the entity, because it wouldn't have the criteria to do so.) If you do want to have rules promulgated, be aware that it could take up to a year or even longer for it to be done, although we do draft nonstatutory provisions that require rules to be submitted to the Legislative Council Rules Clearinghouse by a certain date or provisions that permit rules to be promulgated as emergency rules without requiring that a finding of emergency be first made. What would you like for me to do?

INSERT 18B

****NOTE: So that this provision will not potentially conflict with sub. (2), (4), or (5), I have added a "best interests" standard. Please review.

INSERT 14B

****NOTE: With respect to the advice received from the Bar's Real Property, Probate and Trust section concerning s. 54.12 (2) (intro.), I have changed "savings account" in s. 54.12 (1)(a) to "interest-bearing account." However, I will need from you both proposed language and proposed placement for that language in the statutes in order to effect other changes approved under that advice; I do not understand what or how you intend to "extend to formal probate and summary proceedings".

INSERT 17

****NOTE: Having made the changes proposed by Theresa Roetter, I now fail to see the reason that par. (c) should continue to exist; it is subsumed by par. (b).

****NOTE: It is unclear to me what you want to do with s. 880.16 (1), stats.; Theresa Roetter's decisions did not cover this provision explicitly, nor did Bruce Tammi's. I have repealed it in the "real" bill for now.

INSERT 25

(h) ~~A guardian of the estate~~ [✓] ~~If appointed under this chapter for a married~~
~~person may ward,~~ exercise ~~with the approval of the court, except as limited under s.~~
~~880.37,~~ any management and control right over the marital property or property
other than marital property and any right in the business affairs ~~which~~ that the
married ~~person ward~~ could exercise under ch. 766 if the ~~person were not determined~~
~~under s. 880.12 to be a proper subject for guardianship.~~ Under this section, a
~~guardian may ward~~ ^{do not strike} ~~were not an individual found incompetent~~ consent to act
together in or join in any transaction for which consent or joinder of both spouses is
required, [✓] or ~~may execute~~ under s. 766.58 a marital property agreement with the
~~other ward's spouse or, if appointed for a ward who intends to marry, with the ward's~~
intended spouse, but may not make, amend or revoke a will. X

History: 1983 a. 186; 1985 a. 37.

[✓] **NOTE:** This is s. 880.173 (1), as renumbered and amended. You have decided
to repeal s. 880.37, stats., to which this paragraph refers, so I have stricken the reference.
Please review this paragraph; have I captured your intent?

INSERT 28

2. The ward's close friend, if any, and if the close friend meets the requirements
of s. 50.94 (3) (e) 1. and 2. [✓]

INSERT 29

(g) The current and likely future effect of the proposed transfer of assets on the
ward's eligibility for public benefits, including medical assistance or a benefit under
s. 46.27. [✓]

(h) Whether the guardian of the person and the guardian of the estate, if not
the petitioner, agree with or object to the transfer.

INSERT 35

g. ~~All the rights and privileges afforded a proposed incompetent under this~~
~~section shall be given to any person who is alleged to be ineligible to register to vote~~

~~or to vote in an election by reason that such person is incapable of understanding the objective of the elective process. The determination of the court shall be limited to a finding that the elector is either eligible or ineligible~~ The right to register to vote or to vote in an election by reason that the person is or is not capable if the court finds that the individual is incapable of understanding the objective of the elective process. Also, in accordance with s. 6.03 (3), any elector of a municipality may petition the circuit court for a determination that an individual residing in the municipality is incapable of understanding the objective of the elective process and thereby ineligible to register to vote or to vote in an election. This determination shall be made by the court in accordance with the procedures specified in this paragraph. If a petition is filed under this subdivision unit, the finding of the court shall be limited to a determination as to voting eligibility. The appointment of a guardian or limited guardian is not required for an individual whose sole limitation is ineligibility to vote. The determination of the court shall be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925, or 6.93 with the responsibility for determining challenges to registration and voting which that may be directed against that elector. The determination may be reviewed as provided in s. 880.34 (4) and (5) 54.64 (2) (a) and (c) and any subsequent determination of the court shall be likewise communicated by the clerk of court.

History: 1973 c. 284; 1975 c. 393, 421; 1977 c. 29, 187; 1977 c. 203 s. 106; 1977 c. 299, 318, 394, 418, 447; 1979 c. 110, 356; 1981 c. 379; 1987 a. 366; Sup. Ct. Order, 151 Wis. 2d xxii, xxxiv; 1989 a. 200; Sup. Ct. Order, 153 Wis. 2d xxim xxv (1989); 1991 a. 32, 39; 1993 a. 16, 316; 1995 a. 27 s. 9126 (19); Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 237.

****NOTE: Please review this language to make sure it effects your intent; it is a combination of s. 880.07 (3), stats., which I repealed, and s. 880.33 (9), stats., which I renumbered and amended.

INSERT 36

No ¶ The determination of the court shall be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925, or 6.93

with the responsibility for determining challenges to registration and voting that may be directed against that elector. The determination may be reviewed as provided in s. 54.64 (2) (a) and (c) and any subsequent determination of the court shall be likewise communicated by the clerk of court.

(WLCS: 0220/2)

***NOTE: Please review this language to make sure it effects your intent.

INSERT 38

***NOTE: I have deleted language formerly proposed as "g.": The power to determine the individual's county or state of residence." in light of your comments concerning the decision in Jane E. P. v. Unified Board of Grant and Iowa Counties. Is that your intent?

***NOTE: Your instructions were to make sure that the former language was congruent with the Leg. Council draft's provisions on venue. The Leg. Council draft (under newly created s. 55.075 (5)) states that the court in which a petition is filed shall determine venue. Please tell me explicitly if you have changes to this bill in this regard.

INSERT 41

***NOTE: I deleted "protectively placed" from language proposed for this subsection. Please review it carefully to see if it now reads as you wish.

INSERT 42

draft (WLCS: 0220/2)

***NOTE: The provisions on venue from the Leg. Council bill are as follows: 55.075 (5) (a) (renumbered from s. 55.06 (3) (c) and amended) "The petition shall be filed in the county of residence of the individual to be protected, except that the petition may be filed in the county in which the individual is physically present if extraordinary circumstances necessitate the prevention of harm to the individual or others or require medical care for the individual in that county." (b) (created) "The court in which a petition is filed under par. (a) shall determine venue. The court shall direct that proper notice be given to any potentially responsible or affected county. After all potentially responsible or affected counties and parties have been given an opportunity to be heard, if it is determined that venue lies in another county, the court shall order the entire record certified to the proper court. A court in which a subsequent petition is filed shall, upon being satisfied of an earlier filing in another court, summarily dismiss the petition. If any county or party objects to the court's finding of venue, the issue shall be referred to the department under s. 51.40 (2) (g). The court shall suspend ruling on the motion for change of venue until the determination under s. 51.40 (2) (g) is final." Your provisions in sub. (2) are very different from these. In addition, the Leg. Council has no provisions concerning change of residence. Your instructions are to make subs. (2) and (3) consistent with the Leg. Council proposal. How, explicitly, do you wish for me to do that?

INSERT 45

(2) A physician or psychologist who examines a proposed ward under a court order requiring the examination may, without the informed consent of the proposed ward, obtain access to the patient health care records and treatment records of the proposed ward.

(a)

****NOTE: Please review my amendment to s. 51.30 (4) (b) 8m. Is this what you want? If not, sub. (2) should be drafted to provide that the court order specify access. This is necessary, I believe, to comply with the requirements of s. 51.30 (4) (b) 4., stats., (treatment records access without informed consent under a lawful order of a court of record). For s. 146.82, stats. (patient health care records informed consent requirements), s. 146.82 (2) (a) 2. b., stats. (patient health care records access without informed consent to a healthcare provider who is being consulted regarding the health of the patient) may suffice, but, if not, s. 146.82 (2) (b) 4., stats. (like s. 51.30 (4) (b) 4.) would suffice if the court order specifies access. Does my language comport with your intent?

INSERT 49

****NOTE: Please review. My notes indicate that "to review a guardianship" should be inserted after s. 54.34 in this subsection, but that seems redundant to reviewing incompetency or reviewing the conduct of a guardian.

INSERT 50

****NOTE: Are my changes to subs. (3) and (4) (a) and (b) what you want? I don't understand the switch between "ward" and "individual found incompetent".

INSERT 54

(b) A petition for guardianship of ~~a person~~ an individual who has been admitted to a nursing home or a community-based residential facility under s. 50.06 shall be heard within 60 days after it is filed. If an individual under s. 50.06 (3) alleges that an individual is making a health care decision under s. 50.06 (5) (a) that is not in the best interests of the incapacitated individual or if the incapacitated individual verbally objects to or otherwise actively protests the admission, the petition shall be heard as soon as possible within the 60-day period.

History: 1993 a. 187.

****NOTE: This is s. 880.075, renumbered and amended.

INSERT 56

****NOTE: Is this provision acceptable to you as written?

INSERT 59

OK
no change
****NOTE: I have amended this subdivision to conform the language to s. 54.40 (4) (d) 1.; another alternative would be to conform the language to sub. (1) (a) 2. of this section. A third alternative would be to make all these references identical. Which would you like?

INSERT 61

****NOTE: This provision now appears to be congruent with s. 54.64 (3) (d). I have no indication as to whether it was reviewed by Theresa Roetter.

INSERT 69A

****NOTE: Because s. 48.978 exists in current law, and because Theresa Roetter has indicated that it should not be moved to ch. 54, I have deleted mention of a minor from s. 54.52. Please review.

INSERT 69B

54.56 Visitation by a minor's grandparents and stepparents. (1) In this section, "stepparent" means the surviving spouse of a deceased parent of a minor ~~child~~, whether or not the surviving spouse has remarried.

(2) If one or both parents of a minor ~~child~~ are deceased and the ~~child~~ minor is in the custody of the surviving parent or any other person, a grandparent or stepparent of the ~~child~~ minor may petition for visitation privileges with respect to the ~~child~~ minor, whether or not the person with custody is married. The grandparent or stepparent may file the petition in a guardianship or temporary guardianship proceeding under this chapter that affects the minor ~~child~~ or may file the petition to commence an independent action under this chapter. Except as provided in sub. (3m), the court may grant reasonable visitation privileges to the grandparent or stepparent if the surviving parent or other person who has custody of the ~~child~~ minor has notice of the hearing and if the court determines that visitation is in the best interest of the ~~child~~ minor.

(3) Whenever possible, in making a determination under sub. (2), the court shall consider the wishes of the ~~child~~ minor.

(3m) (a) Except as provided in par. (b), the court may not grant visitation privileges to a grandparent or stepparent under this section if the grandparent or stepparent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the ~~child~~ minor, and the conviction has not been reversed, set aside or vacated.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the ~~child~~ minor. The court shall consider the wishes of the ~~child~~ minor in making the determination.

(4) The court may issue any necessary order to enforce a visitation order that is granted under this section, and may from time to time modify ~~such~~ the visitation privileges or enforcement order ~~upon a showing of~~ for good cause shown.

(4m) (a) If a grandparent or stepparent granted visitation privileges with respect to a ~~child~~ minor under this section is convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the ~~child~~ minor, and the conviction has not been reversed, set aside or vacated, the court shall modify the visitation order by denying visitation with the ~~child~~ minor upon petition, motion or order to show cause by a person having custody of the ~~child~~ minor, or upon the court's own motion, and upon notice to the grandparent or stepparent granted visitation privileges.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the ~~child~~ minor. The court shall consider the wishes of the ~~child~~ minor in making the determination.

(5) This section applies to every minor ~~child~~ in this state whose parent or parents are deceased, regardless of the date of death of the parent or parents.

****NOTE: This section is s. 880.155, renumbered and amended.

54.57 Prohibiting visitation or physical placement if a parent kills other parent. (1) Except as provided in sub. (2), in an action under this chapter that affects a minor ~~child~~, a court may not grant to a parent of the ~~child~~ minor visitation or physical placement rights with the ~~child~~ minor if the parent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05

of the 2nd-degree intentional homicide, of the ~~child's~~ minor's other parent, and the conviction has not been reversed, set aside or vacated.

(2) Subsection (1) does not apply if the court determines by clear and convincing evidence that visitation or periods of physical placement would be in the best interests of the ~~child~~ minor. The court shall consider the wishes of the ~~child~~ minor in making the determination.

***NOTE: This section is s. 880.157, as renumbered and amended.

INSERT 71

(8) CITATION TO FILE INVENTORY AND TO ACCOUNT. If any guardian neglects to file the inventory or account when required by law, the ~~circuit judge~~ court shall call the guardian's attention to the neglect. If the guardian ~~still neglects~~ continues to neglect his or her duty ~~in the premises~~, the court shall order the guardian to file the inventory, and the costs may be adjudged against the guardian.

***NOTE: This provision is s. 880.191 (2), as renumbered and amended.

INSERT 74

(8) ACCOUNTS; FAILURE OF A GUARDIAN TO FILE. If a guardian fails to file the guardian's account as required by law or ordered by the court, the court may, upon its own motion or upon the petition of any interested party ~~interested~~, ~~issue an order to the sheriff ordering~~ order the guardian to show cause ~~before the court~~ why the guardian should not immediately make and file the guardian's reports or accounts. The court shall direct that a copy of the order be served on the guardian at least 20 days before the date that the court has ordered the guardian to appear in court. If a guardian fails, neglects or refuses to make and file any report or account after having been cited by the court ~~so to do~~ so, or if the guardian fails to appear in court as directed by a citation issued ~~under direction and by authority of~~ the court, the court may, ~~upon~~ on its own motion or ~~upon~~ on the petition of any interested party,

issue a warrant directed to the sheriff ordering that the guardian be brought before the court to show cause why the guardian should not be punished for contempt. If the court finds that the failure, refusal, or neglect is willful or inexcusable, the guardian may be fined not to exceed \$50 \$250 or imprisoned not to exceed 10 days or both.

✓
***NOTE: This provision is s. 880.252, as renumbered and amended.

(9) ~~FORMAL ACCOUNTING~~ ACCOUNTING BY GUARDIANS AT ANY TIME. The judge court may at any time require an accounting by any guardian at a hearing, after providing notice to all interested persons, including sureties on the bond of a guardian. The ~~sureties on a bond of a guardian may once in every 3-year period petition the court for such a hearing.~~

✓
***NOTE: This provision is s. 880.253, as renumbered and amended. I have required the court to provide notice; is that what you want?

54.625 Transfer of Menominees guardianship funds to trust of a Menominee. The circuit court ~~which that~~ has appointed a guardian of the estate of any minor or individual found incompetent who is a legally enrolled member of the Menominee Indian tribe, as defined in s. 49.385, or a lawful distributee thereof, as defined in s. 54.85(3), of the member may direct the guardian to transfer the assets in the guardian's possession of the minor or individual found incompetent ~~in the guardian's possession~~ to the trustees of the trust created by the secretary of interior or his or her delegate ~~which that~~ receives property of the minors or ~~incompetents~~ individuals found incompetent that is transferred from the United States or any agency thereof as provided by P.L. 83-399, as amended, and the assets shall thereafter be held, administered, and distributed in accordance with the terms and conditions of the trust. X

***NOTE: I am not at all sure what this provision (s. 880.195, as renumbered and amended) does, and am unable to ascertain for sure if P. L. 83-399, as amended, now is 40 USC 484. ✓

INSERT 76A

***NOTE: This provision now incorporates language from s. 880.34 (3), which I have repealed. ✓

INSERT 76B

(d) The court shall review and may terminate the guardianship of the person of an individual found incompetent upon marriage to any person who is not subject to a guardianship.

***NOTE: This is s. 880.34 (2), as renumbered and amended. Please see my change to sub. (3) (a). ✓

INSERT 77

***NOTE: I have changed this provision because of s. 54.46 (6). ✓

INSERT 78

(6) DELIVERY OF PROPERTY TO ~~FOREIGN~~ GUARDIAN IN ANOTHER STATE. When property of a nonresident ward is in the possession of or due from a guardian or personal representative appointed in this state, the appointing court may order ~~such~~ the property delivered to the foreign guardian upon filing appointed in the state of the nonresident ward after a verified petition, accompanied by a copy of ~~his or her~~ the nonresident guardian's appointment and bond, authenticated so as to be admissible in evidence, is filed with the court and upon after 10 days' notice is provided to the resident guardian or personal representative. ~~Such~~ The petition shall be denied if granting it ~~shall appear~~ appears to be against the interests of the ward. ~~The~~ Any receipt ~~of~~ obtained from the ~~foreign nonresident~~ guardian for the property so delivered shall be taken and filed with the other papers in the proceeding, and a certified copy ~~thereof~~ of the receipt shall be sent to the court ~~which~~ that appointed ~~such~~ the nonresident guardian. ✓

***NOTE: This provision is s. 880.29, as renumbered and amended. Have I amended it as you wish? ✓

INSERT 81

No ~~11~~ The court may authorize use by the petitioner of any of the methods of discovery specified in ch. 804 in support of the petition to review conduct of the guardian.

****NOTE: This material is inserted as part of Bruce Tammi's suggestions.

INSERT 84

54.75 Access to court records. All court records pertinent to the finding of incompetency are closed but subject to access as provided in s. ~~55.06 (17)~~ 51.30 (5). The fact that a person has been found incompetent is accessible to any person who demonstrates to the custodian of the records a need for that information.

****NOTE: This provision is s. 880.33 (6), as renumbered and amended.

INSERT 85A

****NOTE: Note the addition of "standby conservator" to this provision.

INSERT 85B

54.76 (3m) A person may at any time bring a petition for the appointment of a standby conservator for an individual for whom a conservator has been appointed under sub. (2).

****NOTE: This provision mirrors s. 54.52 (1).

****NOTE: Do you want a further provision that would correspond to s. 54.15 (6)?

54.76 (3n) At any hearing conducted under this section the court may designate one or more standby conservators for an individual for whom a conservator has been appointed under sub. (2) whose appointment shall become effective immediately upon the death, unwillingness, unavailability, or inability to act, resignation, or court's removal of the initially appointed conservator or during a period, as determined by the initially appointed conservator or the court, when the initially appointed conservator is temporarily unable to fulfill his or her duties, including during an extended vacation or illness. The powers and duties of the standby conservator shall be the same as those of the initially appointed conservator.

The standby conservator shall receive a copy of the court order establishing or modifying the initial conservatorship, and the order designating the standby conservator. Upon assuming office, the standby conservator shall so notify the court. Upon notification, the court shall designate this conservator as permanent or shall specify the time period for a limited standby conservatorship.

***NOTE: This provision corresponds to s. 54.52 (2).

INSERT 86

(g) Failing to disclose conviction for a crime that would have prevented appointment of the person as conservator.

(h) Failing to disclose that the conservator is listed under s. 146.40 (4g) (a) 2.

INSERT 88A

54.76 (9) (a) If a conservator resigns, is removed, or dies, the court, on its own motion or upon petition of any interested person, may appoint a competent and suitable person as successor conservator. The court may, upon request of any interested person or on its own motion, direct that a petition for appointment of a successor conservator be heard in the same manner and subject to the same requirements as provided under this section for an original appointment of a conservator.

(b) If the appointment under par. (a) is made without hearing, the successor conservator shall provide notice to the individual for whom a conservator has been appointed and all interested persons of the appointment, the right to counsel, and the right to petition for reconsideration of the successor conservator. The notice shall be served personally or by mail not later than 10 days after the appointment.

***NOTE: These paragraphs are modeled after s. 54.54 (1) and (2). Are they, especially par. (b), suitable for a conservatorship?

SUBCHAPTER VII

UNIFORM GUARDIANSHIP ACTS

SECTION 1. 54.850 of the statutes is created to read:

54.850 Definitions. In this subchapter:

(1) "Administration" means any proceeding relating to a decedent's estate whether testate or intestate.

****NOTE: This definition is the same as s. 851.01, stats.

(2) "Beneficiary" means any person nominated in a will to receive an interest in property other than in a fiduciary capacity.

****NOTE: This definition is the same as s. 851.03, stats.

(3) "Distributee" means any person to whom property of a decedent is distributed other than in payment of a claim, or who is entitled to property of a decedent under the decedent's will or under the statutes of intestate succession.

****NOTE: This definition is the same as s. 851.07, stats.

(4) "Person interested" has the meaning given in s. 851.21.

55.01 (1v) "Degenerative brain disorder" means the loss or dysfunction of brain cells to the extent that the individual is substantially impaired in his or her ability to provide adequately for his or her own care or custody.

(6t) "Psychotropic medication" means a prescription drug, as defined in s. 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging behavior.

(6v) "Serious and persistent mental illness" means a mental illness that is severe in degree and persistent in duration, that causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, that may lead to an inability to maintain stable adjustment and independent functioning without long-term treatment and support,

and that may be of lifelong duration. "Serious and persistent mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

55.05 (2) (d) The court may order protective services for an individual for whom a determination of incompetency is made under s. 880.33 54.10 (3) if the individual entitled to the protective services will otherwise incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to others. The court may order the involuntary administration of psychotropic medication as a protective service ~~under this paragraph only if a determination of incompetency is made for the individual under s. 880.33 (4m). The court may authorize a guardian to consent to forcible administration of psychotropic medication for an individual only if the court has made a finding under s. 880.33 (4r) (b) that the individual has substantially failed to comply with the administration of psychotropic medication under the individual's treatment plan~~ only under the requirements of s. 55.14.

History: 1973 c. 284; 1975 c. 393; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 135 s. 83 (3); 1985 a. 176; 1987 a. 161 ss. 7, 13m; 1987 a. 366; 1989 a. 200; 1991 a. 316; 1993 a. 187, 316, 445.

55.06 (6) ~~Section 880.33 (2) applies~~ Sections 54.42, 54.44, and 54.46 apply to all hearings under this chapter except for transfers of placement under sub. (9) (b), (c) and (e). A person to be protected shall have a guardian ad litem who is an attorney appointed in accordance with s. 757.48 (1) present at all hearings under this chapter if the person does not have full legal counsel. The court may, however, excuse a personal appearance by a guardian ad litem based on information contained in a written report by the guardian ad litem to the court. If the person is an adult who is indigent, the county of legal settlement shall be liable for guardian ad litem fees. If the person is a child, the person's parents or the county of legal settlement shall

be liable for guardian ad litem fees as provided in s. 48.235 (8). The subject individual, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including any person making an evaluation or review under sub. (8) (c).

History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109; 2003 a. 33, 326.

****NOTE: I am very unsure if the cross-reference change in the first sentence is appropriate; please review.

****NOTE: The Leg. Council bill contains the creation of s. 55.11 (concerning a comprehensive evaluation, recommendations, statements) Do I put this in? Where do I stop on adding material from that draft?

55.14 Involuntary administration of psychotropic medication. (1) In this section:

(a) "Involuntary administration of psychotropic medication" means any of the following:

1. Placing psychotropic medication in an individual's food or drink with knowledge that the individual protests receipt of the psychotropic medication.
2. Forcibly restraining an individual to enable administration of psychotropic medication.
3. Requiring an individual to take psychotropic medication as a condition of receiving privileges or benefits.

(b) "Not competent to refuse psychotropic medication" means that, ~~because of chronic mental illness, as defined in s. 51.01 (3g)~~ as a result of developmental disabilities, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to an individual, one of the following is true:

1. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives to accepting treatment.

2. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her ~~chronic mental illness condition~~ in order to make an informed choice as to whether to accept or refuse psychotropic medication.

(c) "Protest" means make more than one discernible negative response, other than mere silence, to the offer of, recommendation for, or other proffering of voluntary receipt of psychotropic medication. "Protest" does not mean a discernible negative response to a proposed method of administration of the psychotropic medication.

○ (d) "Psychotropic medication" means a prescription drug, as defined in s. 450.01 (2), that is used to treat or manage a psychiatric symptom or challenging behavior. X

(2) Involuntary administration of psychotropic medication, with consent of a guardian, may be ordered as a protective service only under the requirements of this section. ✓

(3) In addition to the other requirements of this chapter pertaining to petitions for protective services, a petition under this section shall allege that all of the following are true: ✓

(a) A physician has prescribed psychotropic medication for the individual.

(b) The individual is not competent to refuse psychotropic medication.

(c) The individual has refused to take the psychotropic medication voluntarily or attempting to administer psychotropic medication to the individual voluntarily is not feasible or is not in the best interests of the individual. If the petition alleges that

the individual has refused to take psychotropic medication voluntarily, the petition shall identify, if known, the reasons the individual refuses to take psychotropic medication voluntarily. The petition also shall provide evidence showing that a reasonable number of documented attempts to administer psychotropic medication voluntarily using appropriate interventions that could reasonably be expected to increase the individual's willingness to take psychotropic medication voluntarily have been made and have been unsuccessful. If the petition alleges that attempting to administer psychotropic medications to the individual voluntarily is not feasible or is not in the best interests of the individual, the petition must identify specific reasons supporting that allegation.

****NOTE: I have added "if known" to the second sentence, to deal with the situation in which the individual's reasons for refusal cannot be ascertained.

(d) The individual's condition for which psychotropic medication has been prescribed is likely to be improved by administration of psychotropic medication and the individual is likely to respond positively to psychotropic medication.

(e) Unless psychotropic medication is administered involuntarily, the individual will incur an immediate or imminent substantial probability of physical harm, impairment, injury, or debilitation or will present a substantial probability of physical harm to others. The substantial probability of physical harm, impairment, injury, or debilitation shall be evidenced by one of the following:

1. The individual's history of at least 2 episodes, one of which has occurred within the previous 24 months, that indicate a pattern of overt activity, attempts, threats to act, or omissions that resulted from the individual's failure to participate in treatment, including psychotropic medication, and that resulted in a finding of

probable cause for commitment under s. 51.20 (7), a settlement agreement approved by a court under s. 51.20 (8) (b), or commitment ordered under s. 51.20 (13).

2. Evidence that the individual meets one of the dangerousness criteria set forth in s. 51.20 (1) (a) 2. a. to e.

(4) A petition under this section must include a written statement signed by a physician who has personal knowledge of the individual that provides general clinical information regarding the appropriate use of psychotropic medication for the individual's condition and specific data that indicates that the individual's current condition necessitates the use of psychotropic medication.

(5) The guardian ad litem appointed under s. 55.06 (6) for an individual who is the subject of a petition under this section shall report to the court whether the allegations in the petition required under sub. (3) are true, and whether involuntary administration of psychotropic medication is in the best interests of the individual.

****NOTE: WLC: 0220/1 rennumbers s. 55.06 (6) to be s. 55.10 (4) (b) and makes various changes, which are not incorporated in this draft. Please review s. 55.06 (6) to ensure that, as current law, it is satisfactory as a cross-reference under this subsection.

(6) If requested by an individual who is the subject of a petition under this section or anyone on his or her behalf, the individual has the right at his or her own expense, or if indigent at the expense of the county in which the petition is filed, to secure an independent medical or psychological examination relevant to the issue of whether the allegations in the petition required under sub. (3) are true and whether involuntary administration of psychotropic medication is in the best interest of the individual, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

(7) Upon the filing of a petition under this section, the court shall appoint counsel. A petition under this section shall be heard under s. 55.06 within 30 days after it is filed.

***NOTE: Short of creating the general hearings section that is contained in the Leg. Council draft under s. 55.10, I have made reference to s. 55.06 under this subsection. Please review.

(8) The court may issue an order authorizing an individual's guardian to consent to involuntary administration of psychotropic medication to the individual and may order involuntary administration of psychotropic medication to the individual as a protective service, with the guardian's consent if the court or jury finds by clear and convincing evidence that the allegations in the petition required under sub. (3) are true, all other requirements for involuntary administration of psychotropic medication under this section have been met, psychotropic medication is necessary for treating the condition described in the statement under sub. (4), and all other requirements of this chapter for ordering protective services have been met. An order under this section shall do all of the following:

(a) Direct the development of a treatment plan for the individual specifying the protective services, including psychotropic medication as ordered by the treating physician, that the individual should receive. If the individual resides in a nursing home or hospital, the nursing home or hospital shall develop the treatment plan. If the individual resides elsewhere, the county department or an agency with which it contracts shall develop the treatment plan. The treatment plan shall include a plan for the involuntary administration of psychotropic medication to the individual. The treatment plan is subject to the approval of the guardian and to review and approval by the court. If the court approves the plan, the court shall order the county

department or an agency with which it contracts to ensure that psychotropic medication is administered in accordance with the treatment plan.

(b) Order the individual to comply with the treatment plan under par. (a). The order shall provide that if the individual fails to comply with provisions of the treatment plan that require the individual to take psychotropic medications, the medications may be administered involuntarily with consent of the guardian. The order shall specify the methods of involuntary administration of psychotropic medication to which the guardian may consent. An order authorizing the forcible restraint of an individual shall specify that a person licensed under s. 441.06, 441.10, or 448.05 (2) or (5) shall be present at all times that psychotropic medication is administered in this manner and shall require the person or facility using forcible restraint to maintain records stating the date of each administration, the medication administered, and the method of forcible restraint utilized.

(9) If an individual who is subject to an order under this section is not in compliance with the order because he or she refuses to take psychotropic medication as ordered under the treatment plan, and it is necessary for the individual to be transported to an appropriate facility for forcible restraint for administration of psychotropic medication, the corporation counsel shall file with the court a statement of the facts which constitute basis for the noncompliance of the individual. The statement shall be sworn to be true and shall be based upon the information and belief of the person filing the statement. The statement shall be signed by the individual's guardian and by the director or designee of the county department or an agency with which it contracts to develop and administer the treatment plan. Upon receipt of the statement of noncompliance, if the court finds by clear and convincing evidence that the individual has substantially failed to comply with the

administration of psychotropic medication as ordered under the treatment plan, the court may issue an order authorizing the sheriff or any other law enforcement agency in the county in which the individual is found or in which it is believed that the individual may be present to take the individual into custody and transport him or her to an appropriate facility for administration of psychotropic medication using forcible restraint, with consent of the guardian. *this chapter*

(10) Nothing in this section prohibits the involuntary administration of psychotropic medication as an emergency protective service under ~~s. 55.13~~.

(11) The county department or an agency with which it contracts shall provide to the department a copy of any order issued under this section that applies to any protectively placed individual in the county.

(12) The department shall annually submit to the legislature under s. 13.172 a report regarding orders under this section.

(13) An order under this section is subject to annual review under s. 55.19.

55.19 Annual review of order authorizing involuntary administration of psychotropic medication. In addition to or in conjunction with the annual review required under ~~sub. (10)~~, all of the following shall be performed with respect to any individual who is subject to an order under s. 55.14 or an order initially issued under s. 880.33 (4r), 2003 stats., authorizing involuntary administration of psychotropic medication: *s. 55.06 (10), stats., s. 55.06 (10)*

***NOTE: Because ~~sub. (10)~~ is otherwise unaffected by this draft, it is necessary to distinguish between the review under this section and the Watts review under ~~sub. (10)~~. Please review my opening language for this provision.

(1) COUNTY DEPARTMENT PERFORMANCE OF REVIEW. (a) The county department of the individual's county of residence shall, except as provided in sub. (1m), review, in compliance with the requirements of this section, the status of each individual who

is the subject of the order. The review shall include a visit to the individual and a written evaluation of the physical, mental, and social condition of the individual that is relevant to the issue of the continued need for the order. The review shall be made a part of the permanent record of the individual. The county department shall inform the guardian of the individual of the review at the time the review is made and shall invite the individual and the guardian to submit comments or information concerning the individual's need for involuntary administration of psychotropic medication or other protective services before completing a report of the review. Not later than the first day of the 11th month after the initial order is made for an individual, except as provided in par. (b), and at least annually thereafter, the county department shall do all of the following:

1. File a report of the review with the court that issued the order.
2. File with the court under subd. 1. a petition for annual review by the court of the order.
3. Provide the report under subd. 1. to the individual and the guardian of the individual.

(b) If, in an annual review of an individual's status under par. (a), the individual or the individual's guardian or guardian ad litem requests termination of the order and a full due process hearing is provided, or if a full due process hearing is provided under a petition for modification or termination of the order, the county department is not required to initiate a subsequent review under par. (a) until the first day of the 11th month after the date that the court issues a final order after the full due process hearing.

(bm) If the individual is subject to a protective placement order, the review under ^{any} ~~this~~ par. (a) shall be conducted simultaneously with the review ~~under s. 55.18~~ of the individual's protective placement. X

(c) The review under par. (a) may not be conducted by a person who is an employee of a facility in which the individual resides or from which the individual receives services. The report of the review shall include information on all of the following:

1. Whether the individual continues to meet the standards for protective services.

2. Whether the individual is not competent to refuse psychotropic medication, as defined in s. 55.14 (1) (b).

3. Whether the individual continues to refuse to take psychotropic medication voluntarily or attempting to administer psychotropic medication to the individual voluntarily is not feasible or is not in the best interests of the individual, as specified in s. 55.14 (3) (c).

****NOTE: I'm not sure that I understand what this subdivision is requiring; s. 55.14 (3) (c) specifies requirements for a petition for a court order requiring that psychotropic medication be administered involuntarily to an individual. Is it your intent that this subdivision require that the report of the annual review provide all of the evidence that the petition is required to provide? Note that I also added "is not feasible," since s. 55.14 (3) (c) has that option.

4. Whether the individual's condition for which psychotropic medication has been prescribed has been improved by psychotropic medication and the individual has responded positively to psychotropic medication.

5. If the petitioner alleged under s. 55.14 (3) (e) 2. that the individual meet one of the dangerousness criteria set forth in ss. 51.20 (1) (a) 2. a. to e., whether the individual continues to meet the criterion.

6. The comments of the individual and the individual's guardian during the performance of the review, as summarized by the county department, and the response of the county department to the comments.

7. The comments, if any, of a staff member at the facility at which the individual is placed or receives services or at which psychotropic medication is administered to the individual that are relevant to the review of the continued need for the order.

(1m) COUNTY AGREEMENT. The county of residence of an individual who is subject to an order under s. 55.14 and is protectively placed in a different county may enter into an agreement with that county under which the county of the individual's placement performs all or part of the duties of the county of residence under this section.

(2) GUARDIAN AD LITEM APPOINTMENT AND REPORT. After a county department has filed a report with a court under sub. (1) (a) 1., the court shall appoint a guardian ad litem in accordance with s. 757.48 (1). The guardian ad litem shall do all of the following:

(a) Review the report filed under sub. (1) (a) 1. and any other relevant reports on the individual's condition and continued need for the order under s. 55.14.

(b) Meet with the individual and contact the individual's guardian and explain to the individual and guardian all of the following:

****NOTE: Should sub. (2) (b) (intro.) indicate that the explanation must be oral (because par. (c) additionally requires that the information be provided in writing)?

1. The procedure for review of an order for involuntary administration of psychotropic medication.

2. The right of the individual to appointment of legal counsel under sub. (3) (c).

3. The right to an evaluation under sub. (3) (b).

^(b) ~~Sub~~ ^{section} (3) (a) 1. seems to leave it within the discretion of the court. Should this instead say, "That the court may under sub. (3) (a) 1. order performance of an evaluation."?

4. The contents of the report under sub. (1) (a) 1. ✓

5. That a termination of the order for involuntary administration of psychotropic medication may be ordered by the court.

6. The right to a full due process hearing under sub. (3) (d). ✓

(c) Provide the information required under par. (b) to the individual in writing. ✓

(d) Review the individual's condition and rights with the individual's guardian.

(e) Ascertain whether the individual wishes to exercise any of his or her rights under sub. (3) (b), (c), or (d). ✓ ✓ ✓

✓
****NOTE: Please see the ****Note under sub. (2) (b) 3.

(f) Within 30 days after appointment, file with the court a written report based on information obtained under this subsection and any other evaluations or records of the individual. The report shall discuss whether the individual appears to continue to meet the standards for an order under s. 55.14. The report shall also state whether any of the following apply: ✓

1. An evaluation under sub. (3) (b) is requested by the guardian ad litem, the individual, or the individual's guardian. ✓

2. The individual or the individual's guardian requests termination of the order under s. 55.14. ✓

3. The individual or the individual's guardian requests or the guardian ad litem recommends that legal counsel be appointed for the individual.

4. The individual or his or her guardian or guardian ad litem requests a full due process hearing under this section for the individual. ✓

(g) Certify to the court that he or she has complied with the requirements of pars. (b), (c), and (d).

(3) COURT REVIEW OF REPORTS; HEARING; ORDER. (a) The court that issued the order under s. 55.14 shall review the report of the guardian ad litem under sub. (2) (f) and the report filed under sub. (1) (a) 1.

(b) The court shall order performance, by a person who is not an employee of the county department, of an evaluation of the physical, mental, and social condition of the individual that is relevant to the issue of the continued need for the order under s. 55.14 that is independent of the review performed under sub. (1) (a) if any of the following apply:

1. The report required under sub. (1) (a) 1. is not timely filed, or the court determines that the report fails to meet the requirements of sub. (1) (c).

2. Following review of the guardian ad litem's report under sub. (2) (f), the court determines that an independent evaluation for the individual is necessary.

3. The individual or the individual's guardian or guardian ad litem so requests.

(bm) If an evaluation is ordered under par. (b), it shall be performed at the expense of the individual or, if the individual is indigent, at the expense of the county of residence under sub. (1) (a).

(br) The court shall order that the county department obtain any other necessary information with respect to the individual.

(c) The court shall order legal counsel for an individual and, if the individual appears to be indigent, refer him or her to the authority for indigency determinations under s. 977.07 (1) if any of the following apply:

1. Following review of the guardian ad litem's report under sub. (2) (f), the court determines that legal counsel for the individual is necessary.

2. The individual or the individual's guardian or guardian ad litem so requests.

(d) The court shall order either a summary hearing or a full due process hearing. A summary hearing may be held in court or may be held by other means including by telephone or videoconference. The court shall hold a full due process hearing if any of the following apply:

1. The individual or the individual's guardian or guardian ad litem so requests.

2. The report under sub. (2) (f) indicates that the individual no longer meets the standards for an order under s. 55.14 (8).

3. The report under sub. (2) (f) indicates that the individual objects to the order.

(e) Following the hearing under par. (d), the court shall do one of the following:

1. If the court finds that the individual continues to meet the standards for an order under s. 55.14 (8), the court shall order the continuation of the order. The court shall include the information relied upon as a basis for the order and shall make findings based on the requirements for allegations of a petition under s. 55.14 (3) in support of the need for continuation of the order.

****NOTE: In the second sentence under this subdivision, did you mean that the court order shall include the information relied upon as a basis? Or that the court should include this information in some other document?

2. If the court finds that the individual continues to meet the standards for an order under s. 55.14 (8) but that modification of the order or the treatment plan would be in the best interests of the individual, the court shall modify the order, order modifications to the individual's treatment plan, or both. Any modifications to the treatment plan are subject to the approval of the guardian. The court shall include the information relied upon as a basis for its order and shall make findings based on the requirements for allegations of a petition under s. 55.14 (3) in support of the need

for authorizing the guardian to consent to involuntary administration of psychotropic medication.

***NOTE: With respect to the third sentence, please see the ***Note under subd. ✓

1.

3. If the court finds that the individual no longer meets the standards for an order under s. 55.14 (8), the court shall terminate the order. If the order is terminated, the court shall review the needs of the individual with respect to other protective services. If the court determines that the individual meets the standards for other protective services under s. 55.08 (2) that are not currently being provided to the individual, the court may order those protective services for the individual. ✓

This chapter ✓

(f) The court shall provide a copy of the order made under par. (e) to all of the following:

1. The individual.
2. The individual's guardian, guardian ad litem, and legal counsel, if any.
3. The facility in which the individual resided, if any, when the petition for annual review was filed.

4. The county department under sub. (1) (a) and, if relevant, sub. (1m). ✓

③ 55.195 **Duties in of guardian ad litem for reviews.** (intro.) In any review of a protective placement under s. 55.06 or of a protective ~~service~~ services order under s. 55.05, except as provided in s. 55.19 (2), the guardian ad litem shall do all of the following: ✓

(1) Interview the ward to explain the review procedure, the right to an independent evaluation, the right to counsel, and the right to a hearing.

(2) Provide the information under par. (a) sub. (1) to the ward in writing. ✓

(3) Secure Request that the court order an additional medical, psychological, or other evaluation of the ward, if necessary.

(4) Review the annual report and relevant reports on the ward's condition and placement.

History: Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1993 a. 16; 1995 a. 27; 1997 a. 237.

(5) Review the ward's condition, placement, and rights with the guardian.

(6) If relevant, report to the court that the ward objects to the finding of continuing incompetency, the present or proposed placement, the position of the guardian, or the recommendation of the guardian ad litem as to the best interests of the ward or if there is ambiguity about the ward's position on these matters.

(7) Provide a summary written report to the court.

(8) If relevant, report to the court that the ward requests the appointment of counsel or an adversary hearing.

History: Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1993 a. 16; 1995 a. 27; 1997 a. 237.

(9) Attend the hearing.

✓****NOTE: This is s. 880.331 (5), as amended and renumbered and with 55.195 (7) and (9) created. ✓

INSERT 88B

609.65 (1) (intro.) If an enrollee of a limited service health organization, preferred provider plan, or defined network plan is examined, evaluated, or treated for a nervous or mental disorder pursuant to a court order under s. 880.33 (4m) or (4r), 2003, stats., an emergency detention under s. 51.15, a commitment or a court order under s. 51.20 or 880.33 (4m) or (4r), an order for protective placement or protective services under ch. 55, an order under s. 55.14 or 55.19 (3) (e), or an order under ch. 980 then, notwithstanding the limitations regarding participating providers, primary providers, and referrals under ss. 609.01 (2) to (4) and 609.05 (3),

the limited service health organization, preferred provider plan, or defined network plan shall do all of the following:

History: 1987 a. 366; 1993 a. 316, 479; 1995 a. 27; 1997 a. 237; 2001 a. 16.

INSERT 89

814.61 (12) (a) 1. For receiving a trust fund, or handling or depositing money under s. 757.25, or 807.10 (3) ~~or 880.04 (2) (a)~~[✓], at the time the money is deposited with the clerk, a fee of \$10 or 0.5% of the amount deposited, whichever is greater. In addition, a fee of \$10 shall be charged upon each withdrawal of any or all of the money deposited with the clerk.

History: 1981 c. 317; 1983 a. 27; 1983 a. 189 s. 329 (28); 1983 a. 228, 447, 538; 1985 a. 29, 169; 1987 a. 27 ss. 2143p, 3202 (24); 1987 a. 144, 355, 399; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 191; 1991 a. 39, 221, 269; 1993 a. 16, 319, 326, 481, 491; 1995 a. 27, 201, 224, 269, 279, 289, 306; 1997 a. 27, 35, 285; 1999 a. 9, 71; 2001 a. 109; 2003 a. 33, 165, 327.

814.66 (1) (n) For depositing or disbursing money under s. 54.12 (1) (a), a fee of \$10 or 0.5 percent of the amount deposited, whichever is greater at the time the money is deposited with the register in probate, and a fee of \$10 whenever any withdrawal is made of the money deposited with the register in probate.

****NOTE: This language is adapted from s. 814.61 (12) (a) 1.; does it meet your intent?

SECTION 2. Subchapter II (title) of chapter 880 [precedes 880.60] of the statutes is repealed.

SECTION 3. 880.60 of the statutes is renumbered ~~54.82~~^{54.852} and ~~54.82~~^{54.852} (1) (d) and (g), (10) (a) and (12), as renumbered, are amended to read:

54.852 (1) (d) “Guardian” Notwithstanding s. 54.01 (9), “guardian” means any fiduciary for the person or estate of a ward.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.60; 1973 c. 284; 1973 c. 333 s. 201m; 1979 c. 89; 1983 a. 189; 1989 a. 56; 1993 a. 486; 1999 a. 63, 85.

(g) “Ward” Notwithstanding s. 54.01 (38), “ward” means a beneficiary of an individual who receives benefits from the U.S. department of veterans affairs.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.60; 1973 c. 284; 1973 c. 333 s. 201m; 1979 c. 89; 1983 a. 189; 1989 a. 56; 1993 a. 486; 1999 a. 63, 85.

(10) (a) Every guardian shall file his or her accounts as required by this chapter and shall be excused from filing accounts in the case as provided by s. ~~880.25 (3)~~ 54.66 (2).

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.60; 1973 c. 284; 1973 c. 333 s. 201m; 1979 c. 89; 1983 a. 189; 1989 a. 56; 1993 a. 486; 1999 a. 63, 85.

(12) COMPENSATION OF GUARDIANS. Guardians shall be compensated as provided in s. ~~880.24 (1)~~ 54.72.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.60; 1973 c. 284; 1973 c. 333 s. 201m; 1979 c. 89; 1983 a. 189; 1989 a. 56; 1993 a. 486; 1999 a. 63, 85.

SECTION 4. Subchapter III (title) of chapter 880 [precedes 880.61] of the statutes is repealed.

SECTION 5. 880.61 of the statutes is renumbered ~~54.584~~ 54.584 and ~~54.584~~ (title), (intro.), (3) to (6), (10), (11), (13), and (14), as renumbered, are amended to read:

54.854 **Definitions Uniform transfers to minors act; definitions.** (intro.)
In ss. ~~880.61 to 880.72~~ 54.854 to 54.898:

(3) "~~Conservator~~" Notwithstanding s. 54.01 (3), "conservator" means a person appointed or qualified by a court to act as general, limited or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(4) "~~Court~~" Notwithstanding s. 54.01 (4), "court" means the circuit court.

(5) "Custodial property" means any interest in property transferred to a custodian under ss. ~~880.61 to 880.72~~ 54.854 to 54.898 and the income from and proceeds of that interest in property.

(6) "Custodian" means a person so designated under s. ~~880.65~~ 54.870 or a successor or substitute custodian designated under s. ~~880.695~~ 54.888.

(10) "~~Minor~~" Notwithstanding s. 54.01 (19), "minor" means an individual who has not attained the age of 21 years.

(11) ~~"Personal representative"~~ Notwithstanding s. 54.01 (23), "personal representative" means an executor, administrator, successor personal representative or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(13) "Transfer" means a transaction that creates custodial property under s. ~~880.65~~ 54.870.

(14) "Transferor" means a person who makes a transfer under ss. ~~880.61 to 880.72~~ 54.854 to 54.898.

History: 1987 a. 191; 1991 a. 221.

SECTION 6. 880.615 of the statutes is renumbered ~~54.856~~ 54.854 to 54.898 and 54.856 (1) and (2), as renumbered, are amended to read:

54.856 (1) Sections ~~880.61 to 880.72~~ 54.854 to 54.898 apply to a transfer that refers to ss. ~~880.61 to 880.72~~ 54.854 to 54.898 in the designation under s. ~~880.65~~ 54.870 (1) by which the transfer is made if at the time of the transfer the transferor, the minor or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to ss. ~~880.61 to 880.72~~ despite a subsequent change in residence of a transferor, the minor or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under s. ~~880.65 to 880.695~~ 54.870 to 54.888 is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

History: 1987 a. 191.

SECTION 7. 880.62 of the statutes is renumbered ~~54.858~~ 54.858 and 54.858 (2) and (3), as renumbered, are amended to read:

54.858 (2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under s. ~~880.65~~ 54.870 (1).

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under s. 880.65 54.870. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property under s. 880.65 54.870.

History: 1987 a. 191.

SECTION 8. 880.625 of the statutes is renumbered 54.860 and amended to read:

54.860 Transfer by gift or exercise of power of appointment. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor under s. 880.65 54.870.

History: 1987 a. 191.

SECTION 9. 880.63 of the statutes is renumbered 54.862 and amended to read:

54.862 Transfer authorized by will or trust. (1) A personal representative or trustee may make an irrevocable transfer under s. 880.65 54.870 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under s. 880.62 54.858 to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under s. 880.62 54.858, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under s. 880.65 54.870 (1).

History: 1987 a. 191.

SECTION 10. 880.635 of the statutes is renumbered 54.864 and 54.864 (1) and

(2), as renumbered, are amended to read:

NO (B)

54.864 (1) Subject to sub. (3), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor under s. ~~880.65~~ 54.870 in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to sub. (3), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor under s. ~~880.65~~ 54.870.

History: 1987 a. 191.

SECTION 11. 880.64 of the statutes is renumbered 54.866 and amended to read:

54.866 Transfer by obligor. (1) Subject to subs. (2) and (3), a person not subject to s. ~~880.63~~ or ~~880.635~~ 54.862 or 54.864 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor under s. ~~880.65~~ 54.870.

(2) If a person having the right to do so under s. ~~880.62~~ 54.858 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under s. ~~880.62~~ 54.858, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds \$10,000 in value.

History: 1987 a. 191.

SECTION 12. 880.645 of the statutes is renumbered 54.868 and amended to read:

54.868 Receipt for custodial property. A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian under ss. ~~880.61 to 880.72~~ 54.854 to 54.898.

History: 1987 a. 191.

SECTION 13. 880.65 of the statutes is renumbered 54.870.

SECTION 14. 880.655 of the statutes is renumbered 54.872 and amended to read:

54.872 Single custodianship. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under ss. ~~880.61 to 880.72~~ 54.854 to 54.898 by the same custodian for the benefit of the same minor constitutes a single custodianship.

History: 1987 a. 191.

SECTION 15. 880.66 of the statutes is renumbered 54.874 and amended to read:

③ **54.874 Validity and effect of transfer.** (1) The validity of a transfer made in a manner prescribed in ss. ~~880.61 to 880.72~~ 54.854 to 54.898 is not affected by:

(a) Failure of the transferor to comply with s. ~~880.65~~ 54.870 (3) concerning possession and control;

(b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under s. ~~880.65~~ 54.870 (1); or

(c) Death or incapacity of a person nominated under s. ~~880.62~~ 54.858 or designated under s. ~~880.65~~ 54.870 as custodian or the disclaimer of the office by that person.

(2) A transfer made under s. ~~880.65~~ 54.870 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties and authority provided in ss. ~~880.61 to 880.72~~ 54.854 to 54.898, and

neither the minor nor the minor's legal representative has any right, power, duty or authority with respect to the custodial property except as provided in ss. ~~880.61 to 880.72~~ 54.854 to 54.898.

(3) By making a transfer, the transferor incorporates in the disposition all of the provisions of ss. ~~880.61 to 880.72~~ 54.854 to 54.898 and grants to the custodian, and to any 3rd person dealing with a person designated as custodian, the respective powers, rights and immunities provided in ss. ~~880.61 to 880.72~~ 54.854 to 54.898.

History: 1987 a. 191.

SECTION 16. 880.665 of the statutes is renumbered 54.876.

SECTION 17. 880.67 of the statutes is renumbered 54.878[✓] and 54.878 (2), as ~~renumbered~~, is amended to read: X

54.878 (2) This section does not relieve a custodian from liability for breach of s. 880.665 54.876.

History: 1987 a. 191.

SECTION 18. 880.675 of the statutes is renumbered 54.880.

SECTION 19. 880.68 of the statutes is renumbered 54.882[✓] and 54.882 (2) and (3), as renumbered, are amended to read: X

54.882 (2) Except for a person who is a transferor under s. ~~880.625~~ 54.860, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in s. ~~880.695~~ 54.888 (6), a custodian need not give a bond.

History: 1987 a. 191.

SECTION 20. 880.685 of the statutes is renumbered 54.884[✓] and 54.884 (2) and (3), as renumbered, are amended to read: X

54.884 (2) The propriety of, or the authority under ss. ~~880.61 to 880.72~~ 54.854 to 54.898 for, any act of the purported custodian.